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COGNIS CORPORATION
2500 RENAISSANCE BLVD., SUITE 200
GULPH MILLS, PA 19406

[REDACTED] EXAMINER

YU, GINA C

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1617

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13

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/831,431
Filing Date: July 13, 2001
Appellant(s): JACKWERTH ET AL.

STEVEN J. TRZASKA
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on June 18, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The amendment after final rejection filed on March 15, 2002 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief properly addresses the issue in this case.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because claim 22 was rejected on the ground that an optimization of the weight amount of the conditioning oil would have been obvious to one having ordinary skill in the art.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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5,935,561	INMAN ET AL.	8-1999
5,880,299	PONSATI OBIOLS ET AL.	3-1999
5,718,891	PRAT ET AL.	2-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11-22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Prat et al. ("Prat") in view of Ponsati Obiols et al. ("Ponsati Obiols") and Inman et al. ("Inman").

This rejection is set forth in prior Office Action, Paper No. 6.

(11) *Response to Argument*

Attention is drawn to the broad nature of the instant claims reciting the application of a composition on skin or hair without any narrower therapeutic purposes. It is generally considered prima facie obvious to combine two compounds, each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. Cf. In re Kerley, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

In the present case, instant claims read on applying compounds old and well known as useful for application on skin or for hair care. The Prat reference teaches the use of esterquat in hair care compositions. See Prat, col. 1, line 52 – col. 2, line 54. The Ponsati Obiols patent teaches a composition for hair and skin application, which contains esterquat with fatty alcohol and fatty alcohol polyglycol ether. While the invention in Ponsati Obiols does not specifically require oily components, the reference

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nonetheless teaches that conditioning ingredients such as oils or cationic polymers may be added to the invention therein. See Ponsati Obiols, col. 5, line 24 – 56; col. 6, lines 50-54. Inman, while indicating that using oil in hair care product is a well-known practice in the art, teaches combining oil and cationic polymers with a synthetic ester for improved hair conditioning benefits. See Inman, col. 1, line11-col. 2, line 67.

As shown by the recited teachings, the instant claims define nothing more than the concomitant use of four conventional skin care or hair care ingredients old and well known for the use, and it would follow that the recited claims define prima facie obvious subject matter.

Applicants' reliance on Ex parte Levengood as rebuttal to argument that Prat or Ponsati Obiols provides teaching or suggestion to motivate a routineer to read the claimed invention is misplaced. The Ex parte Levengood court sets forth the proposition that no obviousness is found when examiner simply possesses "the necessary skills to carry out the required process steps." See 28 U.S.P.Q. 2d 1300 (Bd. Pat. App. & Inter. 1993). In the present case, the claimed invention is directed to topically applying a composition to skin or hair, for any therapeutic goal, containing known cosmetic ingredients old and well known for use on skin or hair. The holding in Ex parte Levengood is not germane in the instant case because there is nothing nonobvious or unexpected in applying conventional topical ingredients to skin or hair. The motivation to employ old and well known skin care and hair care compositions to hair or skin clearly reside in the prior arts. Since the idea for combining them flows

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logically from their having been used individually in the prior art, combining the compounds known for the same purposes is *prima facie* obvious in this case.

Examiner believes applicants' rebuttal arguments that neither the Prat nor Ponsati Obiols reference teaches use of the oil component are in error. As mentioned above, Ponsati Obiols teaches using conditioning oils in their recited cosmetic composition.

In response to applicants' argument averring an Inman teaching away from adding oil component, examiner maintains the position that a disclosure of disadvantages in using oils in shampoo compositions by Inman does not negate the obviousness of the instant invention. To contraindicate a prior art teaching, the evidence has to motivate the skilled artisan to not employ, a point not appeared or reached by Inman. Examiner asserts that In re Braat, cited by applicants, does not apply in the instant case. The court in the unpublished opinion found a projection lens system having two types of lenses nonobvious because a cited reference taught a specific problem in uniting two types of claimed lenses. See 16 U.S.P.Q. 2d 1812 (Fed. Cir. 1990). On the other hand, what applicants alleges is a "teaching away" in this case is not directed to specific combinability of the components of the instant claims as in In re Braat. Instead, applicants assert that Inman teaches away from using conventional conditioning oil in shampoo in general, citing the Inman's description of the undesirable feel of such compositions. Applicants' assertion is in error since Inman teaches at column 1, line 55 that oils can provide hair conditioning benefits, albeit with a caveat.

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Inman further illustrates more oils which are fully compatible with hair conditioning compositions. See col. 1, line 59 – col. 2, line 26.

Examiner asserts that the controlling law in this case is Celeritas Technologies Ltd. v. Rockwell International Corp. See 150 F.3d 1354, 1361, 47 U.S.P.Q. 1516, 1522-23 (Fed. Cir. 1998). The court there held that the prior art anticipated the claims even though it taught away from the claimed invention, stating “The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed.” The court in In re Heck also stated, “The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain.” See 699 F.2d 1331, 1332-33 216 U.S.P.Q. 1038, 1039 (Fed. Cir. 1983) (quoting In re Lamelson, 397, F.2d 1006, 1009, 158 U.S.P.Q. 275, 277 (C.C.P.A. 1968)). In this case, Inman teaches that using oils in shampoo formulations has been known in the art. Mere disclosure of conventional use as inferior to that use disclosed in the claimed prior art does not make the instant invention nonobvious or unexpected. The skilled artisan would expect that conventional usage to be inferior to those advances set forth in a claimed invention.

Applicants also assert the Inman teaching would motivate a skilled artisan use oil components only with the combination of the cationic polymers and a synthetic ester. In response, examiner reiterates that the scope of the instant claims does not exclude using cationic polymers in the composition.

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Relying on the dissenting opinion in Ex parte GPAC Inc., which cites In re Schaffer, applicants assert; absent the recognition of a potential problems or defects of in the Prat or Ponsati Obiols inventions, no motivation exists for a skilled artisan to add the conditioning oils in Inman. Examiner believes that In re Shaffer is not applicable in the present case. The Schaffer obviousness rejection was reversed because the court found no teaching in either cited references to combine a reference teaching an electro-mechanical amplifier in a titration apparatus with a patent teaching amplifier signal voltage for the purpose of producing more accurate titration (See 108 U.S.P.Q. 326, 329 (C.C.P.A. 1956)). Here, appellants' claimed invention is simply applying concomitantly to skin or hair conventional compounds well known for application to skin or hair individually. As indicated above, combining compounds known for the same purposes is held to be *prima facie* obvious. See In re Kerkhoven, 850. Given the teaching of the prior arts of the record, it must be concluded that the invention defined by the instant claims is obvious, and thus, nonpatentable.

For the above reasons, it is believed that the rejections should be sustained.

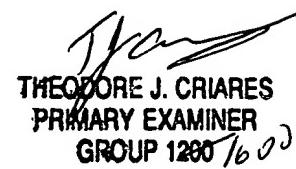
Art Unit: 1617

Respectfully submitted,

gcy
September 6, 2002

Conferees


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200


THEODORE J. CRIARES
PRIMARY EXAMINER
GROUP 1200/60

COGNIS CORPORATION
2500 RENAISSANCE BLVD., SUITE 200
GULPH MILLS, PA 19406


EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500

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FULL TEXT OF CASES (USPQ2D)

All Other Cases

Ex parte Levengood (BdPatApp&Int) 28 USPQ2d 1300 (4/22/1993)

Ex parte Levengood (BdPatApp&Int) 28 USPQ2d 1300

Ex parte Levengood

**U.S. Patent and Trademark Office, Board of Patent Appeals
and Interferences
28 USPQ2d 1300**

**Decided April 22, 1993
No. 92-3654**

Headnotes

PATENTS

1. Patentability/Validity -- Obviousness -- Combining references (§ 115.0905)

Motivation for combining prior art references need not be explicitly found in references themselves, and examiner may provide explanation based on logic and sound scientific reasoning that will support holding of obviousness; fact that invention's theoretical mechanism can be reconstructed and explained by means of logic and sound scientific reasoning does not, however, support obviousness determination unless that logic and reasoning would supply sufficient impetus to have led one of ordinary skill in art to combine references to make claimed invention, and thus examiner cannot establish obviousness by locating references which describe various aspects of applicant's invention unless examiner also provides evidence of motivating force which would impel person skilled in art to do what applicant has done.

Case History and Disposition:

Appeal from final rejection of claims in application for patent (Elizabeth C. Weimar, supervisory patent examiner; Gary Benzion, examiner).

Patent application of William C. Levengood, serial no. 539,302, filed June 16, 1990, which is a continuation of application serial no. 363,451, filed June 6, 1989, now abandoned; which is a continuation of application serial no. 907,858, filed Sept. 15, 1986, now abandoned; which is a continuation-in-part of application serial no. 545,656, filed Oct. 26, 1983, now abandoned; which is a continuation-in-part of application serial no. 309,607, filed Oct. 8, 1981, now abandoned (method for producing new varieties of plants). From final rejection of all claims remaining in application, applicant appeals. Reversed.

Attorneys:

Ian C. McLeod, Okemos, Mich., for appellant.

Judge:

Before Steiner, Goolkasian, and Tarring, examiners-in-chief.

Opinion Text

Opinion By:

Goolkasian, examiner-in-chief.

This is an appeal from the examiner's final rejection of claims 6 through 30, which are all the claims remaining in the application.

Claim 29 is illustrative of the invention and reads as follows:

29. A method for increasing the proportion of altered phenotypes in generations subsequent to at least one progenitor member of a first species of plant, said first species having at least one established phenotype, and said method comprising:

placing said at least one member of said first species in contact with whole cells and associated materials of a second species of plant while simultaneously applying an electrophoretic current across said at least one member of said first species and said whole cells and associated materials of said second species, during a time said at least one member is in a germinal stage; and

allowing said member of said first species to develop from said germinal stage.

The references relied on by the examiner are:

Levengood 3,822,505 Jul. 9, 1974

Janick, *Horticultural Science*, Second Edition, W.H. Freeman and Company, 1963, page 248. Holl et al. (Holl), *Tissue Culture And Plant Science*, "Genetic Transformation in Plants," Proceedings of the third international congress of plant tissue and cell culture held at the University of Leicester, Leicester, England, July 21-26, 1974, pages 303-306, 308-311 and 320-322.

Appellant's invention is directed to a method for increasing the proportion of mutants in a subsequent generation of a member of a plant species having a recognized and established phenotype. The method involves contacting a member of a first plant species (the recipient) with whole cells and associated materials of a second species (the donor), while the member is in a germinal stage, and simultaneously subjecting the contacted combination to electrophoretic conditions. Appellant believes that mutation occurs via the transduction or migration of genetically associated cell tissue components and macromolecular complexes from the donor (second) species to the recipient (first) species of plant. In a preferred process, the first species of plant comprises corn or tomato and the donor species is Eastern Marsh cabbage root.

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All of appellant's claims stand rejected under 35 U.S.C. Section 103 over Levengood in view of the combined teachings of Janick and Holl. We reverse the rejection.

As noted by the examiner, the Levengood Patent describes a method for increasing the proportion of mutants in a single plant species by applying electrical field gradients to the plant while it is in the germinal stage. Importantly, the Levengood reference does not suggest that members of a first plant species should be placed in contact with whole cells and associated materials of a second species while simultaneously applying the electrophoretic current.

The Janick and Holl references are not concerned with the application of electrical current and merely teach standard grafting and/or genetic engineering procedures. Janick describes the grafting of one type of plant onto the rootstock of another type of plant; for example, fruit trees are grafted onto dwarfing rootstocks in order to produce dwarf fruit trees, and watermelon is grafted onto the gourd *Langenaria* to control Verticillium wilt. This reference has little bearing on what is being claimed. The Holl reference teaches that DNA is capable of being transferred from one species of plant to another, usually by using modified bacteria to infect the plant and incorporate heterologous DNA therein. Importantly, neither Holl nor Janick suggest carrying out their respective processes while simultaneously applying an electrophoretic field.

At pages 4 and 5 of the Answer, the examiner has set forth the rationale for the rejection. The examiner notes that each reference discloses a different aspect of the claimed process. The examiner also notes that all aspects were "well known in the art." The examiner then indicates that because the various aspects of the claimed process were individually known in the art, the modifications of the electrophoretic process of Levengood by exposing Levengood's plant materials to cell-associated materials in order to "graft" or otherwise incorporate the cell associated material into the plants was "well within the ordinary skill of the art at the time the claimed invention was made."

We reverse the rejection because the examiner has used the wrong standard of obviousness.

Obviousness is a legal conclusion, the determination of which is a question of patent law. *In re Papesch*, 315 F.2d 381, 137 USPQ 43 (CCPA 1963). In order to establish a *prima facie* case of obviousness, it is necessary for the examiner to present *evidence*,¹ preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. See, for example, *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985).

[1] Motivation for combining the teachings of the various references need not be explicitly found in the references themselves, *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Indeed, the examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. *In re Soli*, 317 F.2d 941, 137 USPQ 797 (CCPA 1963).²

In this case, however, the only suggestion for the examiner's combination of the isolated teachings of the applied references improperly stems from appellant's disclosure and not from the applied prior art. *In re Ehrreich*, 590 F.2d 902, 200 USPQ 504 (CCPA 1979). At best, the examiner's comments regarding obviousness amount to an assertion that one of ordinary skill in the relevant art would have been able to arrive at appellant's invention because he had the necessary skills to carry out the requisite process steps. This is an inappropriate standard for obviousness. See *Orthokinetics Inc. v. Safety Travel Chairs Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986). That which is within the capabilities of one skilled in the art is not synonymous with obviousness. *Ex parte Gerlach*, 212 USPQ 471 (Bd.App. 1980). See also footnote 16 of *Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 1092, 227 USPQ 337, 343 (Fed. Cir. 1985). That one can *reconstruct* and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention.

Our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, or knowledge generally available to one of ordinary skill in the art, that "would lead" that individual "to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989). Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done.

In the case before us, the examiner has provided references having teachings which go a long way towards providing a scientific explanation for *what happened* when appellant performed the claimed combination of process steps. However, the references themselves fall far short of providing the "motivation" or "suggestion" to assemble their teachings into a viable process. A *prima facie* case of obviousness has not been made out.

The examiner's rejection of claims 6 through 30 is reversed.

REVERSED.

Footnotes

Footnote 1. The importance of evidence in the examination process is set forth in the following quotation from *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984):

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), focused on the procedural and evidentiary processes in reaching a conclusion under section 103. As adapted to ex parte procedure, Graham is interpreted as continuing to place the 'burden of proof on the Patent Office which *requires it to produce the factual basis for its rejection of an application under sections 102 and 103*'. *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967). After a *prima facie* case of obviousness has been established, the burden of going forward shifts to the applicant.

Footnote 2. Preferably the examiner's explanation should be such that it provides that impetus necessary to cause one skilled in the art to combine the teachings of the references to make the proposed modification. *In re Albrecht*, 514 F.2d 1385, 185 USPQ 585 (CCPA 1975). See also *Fromson v. Advance Offset Plate Inc.*, 720 F.2d 1565, 219 USPQ 1137 (Fed. Cir. 1983).

- End of Case -

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FULL TEXT OF CASES (USPQ2D)

All Other Cases

(Unpublished) In re Braat (CA FC) 16 USPQ2d 1812 (10/3/1990)

(Unpublished) In re Braat (CA FC) 16 USPQ2d 1812

(Unpublished)
In re Braat

U.S. Court of Appeals Federal Circuit
16 USPQ2d 1812

Decided October 3, 1990
No. 90-1187

Headnotes

PATENTS

1. Patentability/Validity - Obviousness - Relevant prior art - In general (§ 115.0903.01)

One important indicium of non-obviousness is "teaching away" from claimed invention by prior art, and thus prior art which clearly points to specific problems that would occur if two lenses within projection lens system were united does not render obvious claimed invention which unites two types of lenses.

Case History and Disposition:

Appeal from the U.S. Patent and Trademark Office, Board of Patent Appeals and Interferences.

Application for patent filed by Josephus J.M. Braat. From decision affirming examiner's rejection of claims, applicant appeals. Reversed; Archer, J., dissenting.

Judge:

Before Skelton, senior circuit judge, and Archer and Lourie, circuit judges.

[Unpublished Opinion] Opinion Text

Opinion By:

Lourie, J.

[Unpublished Opinion] This case is an appeal from the October 12, 1989, decision of the Board of Patent

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Appeals and Interferences ("Board") in Appeal No. 88-3405, affirming the examiner's rejection of claims 1, 2, 4-6, 8 and 10 as being obvious under 35 U.S.C. §103 in light of the prior art. Because the cited reference does not anticipate and teaches away from the claimed inventions, we *reverse* the decision of the Board.

BACKGROUND

[Unpublished Opinion] The claimed invention relates to a projection lens system with different types of lens groups within the overall lens system. Claim 1 is the broadest claim and provides:

[Unpublished Opinion] 1. A projection lens system for projecting a magnified image of a scene reproduced by means of a reproduction element onto a projection screen, which lens system comprises, in this order and from the image side, a first group, of which at least one outer surface is aspheric, a positive second or main group, of which at least the outer surface which faces the object side is aspheric, and a third group comprising a negative lens whose surface which faces the image side is concave and aspheric, the elements of the first group and the third group being made of transparent plastic, characterized in that *the main group provides substantially the entire power of the system and comprises a glass lens substrate, the outer surface of said substrate which faces the object side being provided with a layer of a transparent plastic having an aspheric outer profile, said layer having a thickness which is substantially smaller than that of the glass lens substrate, said layer having negligible refractive power.* (Emphasis added).

[Unpublished Opinion] Claims 2 and 4-10 are either directly or indirectly dependent on claim 1. Claim 3 was withdrawn, and claims 7 and 9 have been indicated by the examiner to be directed to allowable subject matter.

[Unpublished Opinion] The examiner cited two references, Uehara U.S. Patent 4,564,269 and Hugues U.S. Patent 4,027,952. He found that Uehara taught that a plastic lens may be united with a glass lens in a projection lens system and that Hugues showed this union independently of a larger lens system. The examiner concluded that uniting a plastic lens with a glass lens to constitute the main lens group in the claimed invention would have been obvious to one of ordinary skill in the art. He rejected claims 1, 2, 4-6, 8 and 10 on that basis.

[Unpublished Opinion] The Board found that the claimed invention differs from Uehara only by its limitation that the outer surface of the glass lens substrate is provided with a layer of a plastic lens having an aspheric outer profile, wherein said layer has negligible refractive power. The Board quoted a section of Uehara's specification and found this section to be a nonpreferred embodiment of Uehara but concluded, in light of *In re Boe*, 355 F.2d 961, 148 USPQ 507 (CCPA 1966), that Uehara nevertheless suggested the claimed invention to one of ordinary skill in the art. The Board used Hugues only to show that uniting glass and plastic lenses was known in the art.

DISCUSSION

[Unpublished Opinion] Since this appeal involves limitations in claim 1, and all the other rejected claims incorporate these limitations, we will address only the patentability of claim 1. The Commissioner argues that, notwithstanding the fact that the Board affirmed the rejection based on Section 103, not 102, claim 1 is broad enough to read on the prior art and is therefore unpatentable. While "[i]t is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation," *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983), we do not believe that claim 1 is broad enough to read on the prior art.

[Unpublished Opinion] Claim 1 contains the limitations that the main group comprises a glass lens *substrate*, the outer surface of said substrate being *provided with a layer* of transparent plastic, and said layer having *negligible refractive power*. We conclude that the limitations that there be a substrate and that it be provided with a layer require that the glass lens and the plastic lens be physically combined with one another with no air gap in between. This requirement that one lens be a layer physically attached to another lens is not present in the prior art and, therefore, claim 1 does not read on the prior art.

[Unpublished Opinion] [1] The Board determined the claimed invention to be obvious in light of Uehara, but we find that Uehara in fact teaches away from the claimed invention. Uehara contains the following language:

[Unpublished Opinion] *if* the second lens L2 and the third lens L3 were united together into a lens provided with a nonspherical surface, only the spherical aberration would be corrected by it. *It would be* unable to cope with a wide angle of view. Therefore, there would be obtained a projection lens having a lower MTF value and poor performance of image formation as a whole. Col. 5, line 59-col. 6, line 9 (emphasis added).

[Unpublished Opinion] Uehara clearly points to specific problems that *would occur if* the two lenses were united. One important indicium of non-obviousness is "teaching away" from the claimed invention by the prior art. *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988). We thus conclude that Uehara does not render obvious the claimed invention uniting the two types of lenses.

[Unpublished Opinion] The Board cited *In re Boe*, as noted above, to support its obviousness rejection. In that case, however, the suggestion of practicing the claimed invention in a particular way was more of an embodiment than a teaching away. 355 F.2d at 963, 148 USPQ at 509 ("the pore-forming materials *can be added* with the lattice-forming [sic] materials") (emphasis added). Here, Uehara strongly suggests not to unite the glass and plastic lenses.

[Unpublished Opinion] Also, in *Boe*, if the claimed invention were utilized in the nonpreferred way suggested in the prior art reference, problems would occur. In the applicant's claimed invention, however, the problems of an inability to cope with a wide angle of view, a lower MTF value, and poor performance of image formation as a whole are avoided by his invention's plastic lens having negligible refractive power, as stated in the applicant's specification and as mentioned in oral argument.

[Unpublished Opinion] Claim 1 is not obvious in view of Uehara. Since claims 2 and 4-6, 8 and 10 contain limitations in addition to the limitations in claim 1, they too are not obvious in view of Uehara.

REVERSED

[Unpublished Opinion] Dissenting Opinion Text

Dissent By:

Archer, J., dissenting.

[Unpublished Opinion] I respectfully dissent and would affirm the decision of the Board on the basis of its opinion.

- End of Case -